Appln. No.: 10/597,549

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.: 007412.00135
Richard M. WOUNDY et al.	
Serial No.: 10/597,549	Group Art Unit: 2426
Filed: September 3, 2008	Examiner: Kay, M.
For: SYSTEM AND METHOD FOR FAILSOFT HEADEND OPERATION	Confirmation No.: 2599

PRE-APPEAL BRIEF REQUEST FOR REVIEW

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants respectfully request review of the March 16, 2010, final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks.

The Shortened Statutory Period for responding to the Office Action expires on June 16, 2010. Accordingly, no extensions are required at this time. However, any required extension is hereby requested, and please charge all fees due at this time to Deposit Account No. 19-0733.

Remarks

Having received and reviewed the final Office Action dated March 16, 2010, Applicants respectfully submit that the standing rejections are based on one or more clear errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

The pending rejections exhibit clear factual and legal errors with respect to the cited references. Several of these errors are highlighted in the section below, and were presented in the After-Final Request for Reconsideration filed May 17, 2010.

I.   Finality of the Action

As a preliminary matter, Applicants submit that the finality of the Action was improper. Claim 18 was formerly a dependent claim, and was amended to be in independent form in the prior amendment filed Nov. 13, 2009. In the Final Office Action, the Office withdrew its anticipation rejection of this claim, and instead applied a new four-way combination of references. This new ground of rejection of claim 18 was not necessitated by the amendment, and Applicants should have been given a fair opportunity to respond to this new rejection.

Applicants raised this point in both the telephone request for an after-final interview (which was denied) and the Request for Reconsideration. The ensuing Advisory Action states that the amendment to claim 18 required reconsideration of the remaining <u>dependent</u> claims, but it overlooks the fact that claim 18 itself was not amended to require any new search or consideration. <u>That</u> is the new ground of rejection that was not necessitated by any amendment. At a minimum, Applicants submit that the Final Office Action should have been issued in Non-Final form, and if the rejections are maintained, then they should be made in a new Non-Final Office Action.

Independent Claim 1 and Dependent Claims 2, 5, 22, 23 and 25

Turning to the art-based rejections, claim 1 recites something that happens in response to a communication failure. Specifically, claim 1 recites the following (emphasis added):

> "providing a policy to a facility, the policy defining policy limits for transactions that <u>normally require approval from a database at a time a transaction is requested,</u> wherein the policy includes failsoft rules governing <u>limited transaction approval</u> to be used by the facility in the event of a <u>communication failure</u> between the facility and the database at a time of a transaction request;" and

> "using, by a facility computing device, the failsoft rules to <u>preliminarily grant approval for the requested transaction</u> in <u>response to</u> determining that a communication failure exists between the facility and the database at the time of the transaction request."

In rejecting this claim, the Action cites Russell et al., para. [0093] for the policy and failsoft rules. In that cited portion, the Russell et al. transaction request is a request to download a content item, and the main server checks to see how many times a given URL has previously requested to download the content item. If the URL has tried too many times (e.g., 3 times), the

next download request is denied. There is no preliminary <u>approval</u> for the requested transaction in those rules in response to a failure. Instead, if the check fails, the request is simply denied.

The claim also recites that the failure is a communication failure between the facility and the database at the time of the transaction request. The Office concedes that Russell et al. fails to show such a failure, and cites Peck for detecting a communication failure. Peck describes a portable computing unit surveying inventory in a warehouse and communicating it to a controller, and uses acknowledgement signals and timeouts to confirm success or failure of communications between the portable unit and controller. Peck, para. [0064]. The portable unit is not requesting authorization for any transaction – it is simply reporting inventory. In the event of a failure in communications, Peck describes use of an audible or visual alarm to alert an operator. Even if Peck's detection of a communication failure were used as the failure in the Russell et al. check, there still would be no preliminary approval in response to determining that such a failure exists.

For at least these reasons, Applicants submit that independent claim 1 distinguishes over the alleged combination of Russell et al. and Peck. Claims 2, 5, 22-23 and 25 depend from claim 1, and are distinguishable for at least the same reasons, and further in view of the various features recited therein.

<u>Independent Claim 8 and Dependent Claims 9, 11 and 26</u>

Independent claim 8 recites, among other features, the following:

> attempting to communicate to an authorization computer a request for approval of the request for content;
>
> determining that a communication failure has delayed or disrupted <u>the process of obtaining approval of the request from the authorization computer</u>; and
>
> <u>in response to the communication failure, approving or denying the request for content according to the facility's received set of failsoft rules</u>

In rejecting this claim, the Office cites the same portions of Russell et al. and Peck discussed above. In this claim, the communication failure is recited as having delayed or disrupted the process of obtaining approval of the request from the authorization computer, and approves or denies the request for content according to the facility's received set of failsoft rules. The Office concedes that Russell lacks this kind of communication failure. As for Peck, the

failure there is not a delay or disruption in the process of obtaining <u>approval</u> of the request from the authorization computer.

Peck fails to remedy the deficiencies of Russell with respect to claim 8, and thus claim 8 is allowable over the asserted combination at least for the reasons discussed above. Claims 9, 11 and 26 each depend from claim 8 and are thus allowable over the asserted combination of Russell and Peck at least for the same reasons as claim 8, and further in view of the various features recited therein.

Independent Claim 18 and Dependent Claims 16, 17, and 19-21

As noted above, Applicants submit that the new rejection of claim 18 should have prevented the Action from becoming final.

Regarding the new rejection, Applicants are a bit uncertain as to the Office's position regarding Burns et al., especially since Applicants' request to clarify/discuss this at an after-final interview was denied. The prior Action relied solely on Burns et al., and Applicants argued that Burns et al. failed to show the following claimed feature:

> wherein the at least one headend IT infrastructure is programmed
> to determine an availability of access to the central database, and in
> the event that access to the central database is unavailable, handle
> real-time transactions, without real-time access to the central
> database, in accordance with the policy limits, thereby providing
> failsoft headend facility operation

In the current Action, the Office withdrew the prior rejection of claim 18, but in the new rejection, the Office once again relies on Burns et al. for this feature. Applicants' response on this point is the same as it was before – the Burns et al. local service provider 110 checks its own cache, and uses its local copy if it is there. This is done regardless of whether access to the target source is available. Accordingly, and as noted before, Burns et al. does not determine an availability of access to the central database, or respond in the manner recited. The new references are only cited for other aspects of claim 18, and do not overcome the deficiency which remains in Burns et al.

Claims 16-17 and 19-21 depend from claim 18, and are distinguishable for at least the same reasons as claim 18, and further in view of the various features recited therein.

CONCLUSION

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

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